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April 18, 2013

BY HAND

Mr. Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6726 (Congressional Leadership Fund)

Dear Mr. Herman:

This office represents the Congressional Leadership Fund ("CLF") and Caleb Crosby in his official capacity as Treasurer in the above-captioned Matter Under Review ("MUR"). This letter responds to the complaint by Public Citizen, Friends of the Earth, Greenpeace, and Oil Change International received by the Federal Election Commission ("FEC" or "Commission") dated March 5, 2013 ("Complaint"), as amended by an addendum dated March 13 ("Addendum").<sup>1</sup>

The Complaint alleges that CLF knowingly solicited a contribution from a federal contractor in violation of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"). The Complaint's allegation is not supported by sufficient facts and is belied by the information provided in this response and the enclosed Affidavit of Trent T. Edwards, CLF Director of Development (hereinafter "Edwards Aff."). Therefore, the Commission should find no reason to believe that CLF and its Treasurer violated the Act and should dismiss this matter.

#### FACTS

CLF is an independent expenditure-only committee registered with the FEC. CLF does not solicit contributions from federal contractors. Edwards Aff. ¶ 4. Since at least July 2012, CLF's website has indicated: "Contributions from foreign nationals, federal government contractors, national banks, or corporations organized by act of Congress are prohibited." Congressional Leadership Fund, <https://secure.pirya.com/donate/FVKsA54i/Congressional-Leadership-Fund/> (last visited Mar. 26, 2013); Edwards Aff. ¶¶ 2, 4. CLF's other fundraising materials

<sup>1</sup> On March 20, 2013, the Commission granted our request for an extension of time to respond to the Complaint until April 18.

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include a similar notice that it does not solicit or accept contributions from federal contractors. Edwards Aff. ¶ 4.

In late September, 2012, representatives of CLF and Chevron met to discuss a potential contribution to CLF. Edwards Aff. ¶ 5. CLF subsequently learned from Chevron Corporation that it was considering whether to contribute and that it was not a federal contractor. Edwards Aff. ¶ 5. The following month, CLF received a contribution in the form of a check for \$2.5 million drawn on the account of "Chevron" that was subsequently and timely disclosed on CLF's reports filed with the FEC. Edwards Aff. ¶ 6.

When the Complaint in this MUR was filed on March 5, 2013, a spokesperson for Chevron confirmed in numerous media outlets CLF's understanding that the "contribution was made by Chevron Corporation. The Corporation does not conduct business with the federal government. Any such federal contracts are held by Chevron subsidiaries." Paul Blumenthal, *Chevron Super PAC Contribution Complaint Raises Its Own Questions*, Huffington Post (Mar. 5, 2013, 10:11 PM), [http://www.huffingtonpost.com/2013/03/05/chevron-super-pac-contribution\\_n\\_2814113.html](http://www.huffingtonpost.com/2013/03/05/chevron-super-pac-contribution_n_2814113.html); see also David R. Baker, *Chevron Super PAC Donation Spurs Complaint*, The San Francisco Chronicle (Mar. 5, 2013, 7:34 PM), <http://www.sfgate.com/default/article/Chevron-super-PAC-donation-spurs-complaintt-4331234.php>; Megan R. Wilson & Zack Colman, *Watchdogs Say Chevron Made Illegal Donation to GOP Super-PAC*, The Hill (Mar. 5, 2013, 5:01 PM) <http://thehill.com/blogs/ballot-box/fundraising/286333-watchdogs-say-chevron-made-illegal-donation-to-gop-super-pac>.

#### THE COMPLAINT AND ADDENDUM

The Complaint cites information from the website [usaspending.gov](http://usaspending.gov) to demonstrate that Chevron USA, Inc. was a party to federal contracts. Complaint ¶ 10, App. A. The Complaint then relies on CLF's FEC reports that disclose "Chevron" as a contributor to conclude that Chevron USA, Inc. also contributed to CLF. Complaint ¶ 11, App. B. After the Chevron spokesperson explained that Chevron's contribution to CLF was made by Chevron Corporation – and not a subsidiary such as Chevron USA, Inc. – complainants filed their Addendum.

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The Addendum notes additional information from the [usaspending.gov](http://usaspending.gov) website indicating that Chevron Corporation has also been a party to federal contracts. The Addendum does not state whether Chevron Corporation was a federal contractor at the time it made its contribution to CLF. Rather, the Addendum is styled as a "Request for investigation" and concludes with a "request that the FEC investigate [to] determine whether the contributor had outstanding federal contracts (or negotiations for them) at the time of the contribution." The Addendum does not affirmatively allege a violation of the Act by Chevron Corporation or CLF.

The only specific allegations against CLF in the Complaint are as follows:

The sheer size of the donation raises questions whether the Congressional Leadership Fund solicited the support from Chevron or, at the very least, raises questions why the Congressional Leadership Fund did not check to see if Chevron is a government contractor and return the donation in compliance with the law as required and noted on the Fund's own web site.

The Congressional Leadership Fund was aware that contributions to it from Federal contractors are illegal, and should have reasonably known that Chevron is a Federal contractor, and thus should be found in violation of 2 U.S.C. 441c for soliciting or accepting the \$2.5 million donation.

Complaint ¶¶ 11, 24.<sup>2</sup>

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<sup>2</sup> The Complaint also discusses the spending patterns of independent expenditure-only committees to suggest that this "casts grave doubt on the adequacy of the FEC's current coordination rules." Complaint ¶¶ 15-18, App. C. The Complaint does not allege that CLF engaged in coordinated activity, therefore, this response does not otherwise address coordination.

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**THE ACT, IMPLEMENTING REGULATIONS, COMMISSION  
PRECEDENT, AND CASE LAW**

"It shall be unlawful for any person ... knowingly to solicit [a] contribution" from any other person that "enters into a contract with the United States" or from a person "at any time between the commencement of negotiations for the latter of (A) the completion of performance under; or (B) the termination of negotiations for, such contract." 2 U.S.C. 441c(a); *see also* 11 C.F.R. 115.2.<sup>3</sup>

When examining a complaint alleging a violation of this prohibition, "the Commission looks first to whether the [contributing] entity met the statutory and regulatory definition of government contractor at the time the contribution was made." FEC MUR 6403 (Alaskans Standing Together), Factual and Legal Analysis at 5 (Nov. 10, 2011). If the contributing entity is a parent corporation and "can demonstrate that it is, in fact, a separate and distinct legal entity from its government contractor subsidiaries, and that it had sufficient funds to make the contributions from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company." *Id.* at 6 (citing FEC Advisory Opinions 2005-01 and 1999-32).

The Commission then examines whether the federal contractor contribution was "knowingly" solicited by the recipient. *Id.* at 9 (quoting *FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986)). This requires that a party have "knowledge of the facts rendering its conduct unlawful." *Dramesi*, 640 F. Supp. at 987 (knowledge of the amount contributed required for a knowing violation of the contribution limits); *see also* *FEC v. Cal. Medical Assoc.* 502 F. Supp. 196, 203 (N.D.Cal. 1980) (same). "The statutory term 'knowingly' . . . requires proof of knowledge of the facts that constitute the offense." *FEC v. Kalogianis*, 2007 WL 4247795, at \*5 (M.D.Fla. 2007) (knowledge that a contribution was from a corporation required for a knowing violation of the

<sup>3</sup> These statutory and regulatory provisions also prohibit a federal contractor from making contributions. However, the continuing validity of these prohibitions on contributions to independent expenditure-only committees remains unclear. *See* Ian Duncan & Matea Gold, *Federal Contractors Donate To "Super PAC" Backing Romney*, L.A. Times (Mar. 18, 2012, 7:17 PM), <http://www.latimes.com/news/nationworld/nation/la-na-contractor-politics-20120318,0,5184326.story?page=1>.

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corporate contribution prohibition). Accordingly, a "knowing" solicitation of a federal contractor requires that the person soliciting the contribution possess knowledge that the contributor is, in fact, a federal contractor.

Any complaint alleging a legal violation "should contain a clear and concise recitation of the facts which describe a violation." 11 C.F.R. 111.4(d)(3). "Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true.... [P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred." FEC MUR 4960 (Clinton for US Senate), Statement of Reasons at 2, 3 (Dec. 21, 2000) (internal citations omitted).

#### DISCUSSION

The Complaint and Addendum merely speculate that Chevron Corporation was a federal contractor at the time of CLF's contribution solicitation and do not aver facts necessary to allege a violation. Furthermore, CLF was informed during and after its solicitation that Chevron Corporation was not a federal contractor. Edwards Aff. ¶¶ 5, 7. Therefore, the Complaint and Addendum do not sufficiently allege a violation and CLF did not, in fact, violate the prohibition against knowingly soliciting a contribution from a federal contractor.

First, the Addendum itself demonstrates the deficiencies of the facts supporting the allegations of the Complaint. The Complaint alleged that Chevron USA, Inc. was a federal contractor and had contributed to CLF. A Chevron spokesperson immediately and publicly denied that Chevron USA, Inc. contributed to CLF and stated that Chevron Corporation – which is not a federal contractor – made the contribution.

Complainants then filed the Addendum to include Chevron Corporation, but failed to provide evidence that Chevron Corporation was a federal contractor when CLF made its solicitation. The Addendum states that the website [usaspending.gov](http://usaspending.gov) indicates that Chevron Corporation may have been a federal contractor, but the Addendum merely speculates that the contribution to CLF "would be illegal if any of those contracts was either in force or being negotiated when the contribution was made." (Emphasis added.) The Addendum acknowledges its lack of factual support by deleting the Complaint's allegations of a violation and converting the

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Complaint into a "Request for investigation" to "determine whether the contributor had outstanding federal contracts (or negotiations for them) at the time of the contribution."

Accordingly, the Complaint and Addendum do not "contain a clear and concise recitation of the facts which describe a violation" as required by Commission regulations. 11 C.F.R. 111.4(d)(3). To the extent the Complaint and Addendum suggest a violation occurred, they are "purely speculative charges" that have been "accompanied by a direct refutation" from a Chevron spokesperson and, therefore, "do not form an adequate basis to find reason to believe that a violation of the FECA has occurred." FEC MUR 4960, Statement of Reasons at 3.

Second, CLF did not knowingly solicit a contribution from a federal contractor. As acknowledged in paragraph 11 of the Complaint, CLF's publicly available website – and other materials – clearly state that CLF does not solicit or accept contributions from federal contractors. Edwards Aff. ¶ 4.

In addition, Chevron Corporation confirmed to CLF prior to making the contribution that Chevron Corporation was not a federal contractor. Edwards Aff. ¶ 5. A Chevron spokesperson subsequently repeated that the "contribution was made by Chevron Corporation" which "does not conduct business with the federal government." Paul Blumenthal, *Chevron Super PAC Contribution Complaint Raises Its Own Questions*, Huffington Post (Mar. 5, 2013, 10:11 PM), [http://www.huffingtonpost.com/2013/03/05/chevron-super-pac-contribution\\_n\\_2814113.html](http://www.huffingtonpost.com/2013/03/05/chevron-super-pac-contribution_n_2814113.html); see also David R. Baker, *Chevron Super PAC Donation Spurs Complaint*, The San Francisco Chronicle (Mar. 5, 2013, 7:34 PM), <http://www.sfgate.com/default/article/Chevron-super-PAC-donation-spurs-complaint-4331234.php>; Megan R. Wilson & Zack Colman, *Watchdogs Say Chevron Made Illegal Donation to GOP Super-PAC*, The Hill (Mar. 5, 2013, 5:01 PM) <http://thehill.com/blogs/ballot-box/fundraising/286333-watchdogs-say-chevron-made-illegal-donation-to-gop-super-pac>; Edwards Aff. ¶ 7.

Therefore, CLF did not violate the Act's prohibition against "knowingly" soliciting a federal contractor. A violation results only if CLF had "knowledge of the facts rendering its conduct unlawful." *Dramesi*, 640 F. Supp at 987, see also *Kalogianis*, 2007 WL 4247795 at \*5 ("The statutory term 'knowingly' ... requires proof of

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knowledge of the facts that constitute the offense.”). As applied here, CLF would have to possess knowledge that Chevron Corporation was a federal contractor – the critical fact that would constitute the offense – at the time CLF solicited the contribution.

CLF had no such knowledge when it solicited the contribution. To the contrary, Chevron Corporation privately represented to CLF that Chevron Corporation was not a federal contractor. CLF’s understanding was confirmed by a Chevron spokesperson’s subsequent public statements. Even if Chevron Corporation were a federal contractor, CLF did not possess any such knowledge. Therefore, CLF did not “knowingly” solicit a federal contractor in violation of the Act.

### CONCLUSION

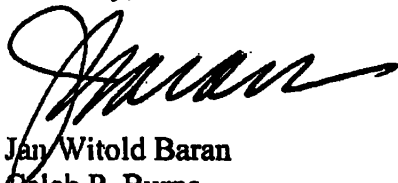
The Complaint and Addendum are speculative and do not allege facts to support a claim that Chevron Corporation was a federal contractor at the time of CLF’s solicitation. Furthermore, Chevron Corporation’s private and public representations that it was not a federal contractor establish that CLF did not violate the Act by “knowingly” soliciting a federal contractor. Therefore, the Commission should find no reason to believe that CLF and its Treasurer violated the Act and dismiss this matter.<sup>4</sup>

<sup>4</sup> For the reasons just explained, dismissal of CLF and its Treasurer is warranted on the merits. In addition, there is no reason for CLF and its Treasurer to remain parties to this MUR for any possible remedial purpose. The Complaint erroneously states that “if Chevron is a government contractor,” then CLF is required to “return the donation in compliance with the law.” Complaint ¶ 11. However, the relevant statute prohibits “any person ... knowingly to solicit [a] contribution” from a federal contractor. 2 U.S.C. 441c(a) (emphasis added); *see also* 11 C.F.R. 115.2. There is no corresponding prohibition preventing a person from accepting a contribution from a federal contractor. *Compare* 2 U.S.C. 441c(a) (no person may “solicit” a contribution from a federal contractor) *with* 2 U.S.C. 441a(f) (no political committee may “accept” an excessive contribution), 441b(a) (no political committee may “accept or receive” a corporate contribution), 441e(a) (no person may “solicit, accept, or receive” a contribution from a foreign national), 441f (no person may “accept” a contribution in the name of another person).

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Sincerely,



Jan Witold Baran  
Caleb P. Burns

Enclosure

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